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## **SOCIAL SECURITY ADMINISTRATION**

**[Docket No. SSA-2016-0034]**

### **Social Security Ruling, SSR 18-3p; Titles II and XVI: Failure to Follow Prescribed Treatment**

**AGENCY:** Social Security Administration.

**ACTION:** Notice of Social Security Ruling (SSR).

**SUMMARY:** We are providing notice of SSR 18-3p. This Ruling provides guidance about how we apply our failure to follow prescribed treatment policy in disability and blindness claims under Titles II and XVI of the Social Security Act (Act).

**DATES:** We will apply this notice on October 29, 2018.

**FOR FURTHER INFORMATION CONTACT:** Dan O'Brien, Office of Vocational, Evaluation, and Process Policy in the Office of Disability Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, 410-597-1632.

For information on eligibility or filing for benefits, call our national toll-free number at 1-800-772-1213, or visit our Internet site, Social Security online, at <http://www.socialsecurity.gov>.

**SUPPLEMENTARY INFORMATION:** Although 5 U.S.C. 552(a)(1) and (a)(2) do not require us to publish this SSR, we are publishing it in accordance with 20 CFR 402.35(b)(1).

We use SSRs to make available to the public precedential decisions relating to the Federal old age, survivors, disability, supplemental security income, and special veterans benefits programs. We may base SSRs on determinations or decisions made in our administrative review process, Federal court decisions, decisions of our Commissioner, opinions from our Office of the General Counsel, or other interpretations of law and regulations.

Although SSRs do not have the same force and effect as law, they are binding on all components of the Social Security Administration in accordance with 20 CFR 402.35(b)(1), and are binding as precedents in adjudicating cases.

This SSR will remain in effect until we publish a notice in the Federal Register that rescinds it, or until we publish a new SSR in the Federal Register that rescinds and replaces or modifies it.

(Catalog of Federal Domestic Assistance, Programs Nos. 96.001, Social Security--Disability Insurance; 96.002, Social Security-- Retirement Insurance; 96.004, Social Security--Survivors Insurance; 96.006--Supplemental Security Income.)

**Nancy A. Berryhill,**  
*Acting Commissioner of Social Security.*

## POLICY INTERPRETATION RULING

### TITLES II AND XVI: FAILURE TO FOLLOW PRESCRIBED TREATMENT

This Social Security Ruling (SSR) rescinds and replaces SSR 82-59: “Titles II and XVI: Failure to Follow Prescribed Treatment.”

PURPOSE: To provide guidance on how we apply our failure to follow prescribed treatment policy in disability and blindness claims under titles II and XVI of the Social Security Act (Act).

CITATIONS (AUTHORITY): Sections 216(i), 223(d) and (f), and 1614(a) of the Act, as amended; 20 CFR 404.1530 and 416.930.

DATES: We will apply this notice on October 29, 2018.<sup>1</sup>

### OVERVIEW

#### A. Background

#### B. When we decide whether the failure to follow prescribed treatment policy may apply in an initial claim

Condition 1: The individual is otherwise entitled to disability or statutory blindness benefits under titles II or XVI of the Act

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<sup>1</sup> Our adjudicators will apply this ruling when we make determinations and decisions on or after October 29, 2018. When a Federal court reviews our final decision in a claim, we expect the court will review the final decision using the rules that were in effect at the time we issued the decision under review. If a court finds reversible error and remands a case for further administrative proceedings on or after October 29, 2018, the applicable date of this ruling, we will apply this ruling to the entire period at issue in the decision we make after the court’s remand. Our regulations on failure to follow prescribed treatment are unchanged.

Condition 2: There is evidence that an individual's own medical source(s) prescribed treatment for the medically determinable impairment(s) upon which the disability finding is based

Condition 3: There is evidence that the individual did not follow the prescribed treatment

C. How we will make a failure to follow prescribed treatment determination

Assessment 1: We assess whether the prescribed treatment, if followed, would be expected to restore the individual's ability to engage in substantial gainful activity (SGA)

Assessment 2: We assess whether the individual has good cause for not following the prescribed treatment

D. Development procedures

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Adult claims that meet or equal a listing at step 3

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H. Continuing Disability Reviews (CDR)

I. Duration in disability and Title II blindness claims

J. Duration in Title XVI blindness claims

K. Claims involving both drug addiction and alcoholism (DAA) and failure to follow prescribed treatment

A. Background

Under the Act, an individual who meets the requirements to receive disability or blindness benefits will not be entitled to these benefits if the individual fails, without good cause, to follow prescribed treatment that we expect would restore his or her ability to engage in substantial gainful activity (SGA).<sup>2</sup>

We apply the failure to follow prescribed treatment policy at all levels of our administrative review process when we decide an initial claim for benefits based on disability or blindness. We also apply the policy when we reopen a prior determination or decision involving a claim for benefits based on disability or blindness, when we conduct an age-18 redetermination, and when we conduct a continuing disability review (CDR) under titles II or XVI of the Act.

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<sup>2</sup> Sections 223(f) and 1614(a) of the Act. The ability to engage in SGA is the standard in adult disability claims. However, when this policy is applied in title XVI child disability claims, the standard is “the prescribed treatment is expected to eliminate or improve the child’s impairment so that it no longer results in marked and severe functional limitations.” Similarly, for claims based on statutory blindness, the standard is the prescribed treatment would be expected to “restore vision to the extent that the individual will no longer be blind.”

This SSR explains the policy and procedures we follow when we decide whether an individual has failed to follow prescribed treatment as required by the Act and our regulations.<sup>3</sup>

B. When we decide whether the failure to follow prescribed treatment policy may apply in an initial claim

We will determine whether an individual has failed to follow prescribed treatment only if all three of the following conditions exist:

1. The individual would otherwise be entitled to benefits based on disability or eligible for blindness benefits under titles II or XVI of the Act;
2. We have evidence that an individual's own medical source(s) prescribed treatment for the medically determinable impairment(s) upon which the disability finding is based; and
3. We have evidence that the individual did not follow the prescribed treatment.

If all three conditions exist, we will determine whether the individual failed to follow prescribed treatment, as explained below.<sup>4</sup>

Condition 1: The individual is otherwise entitled to disability or statutory blindness benefits under Titles II or XVI of the Act

We only perform the failure to follow prescribed treatment analysis discussed in this SSR after we find that an individual is entitled to disability or eligible for statutory

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<sup>3</sup> See 20 CFR 404.1530 and 416.930.

<sup>4</sup> There are two exceptions at step 3 of the sequential evaluation process, explained in section F (below), when we will not make a failure to follow prescribed treatment determination even if these three conditions are met.

blindness benefits under titles II or XVI of the Act, regardless of whether the individual followed the prescribed treatment. We will not determine whether an individual failed to follow prescribed treatment if we find the individual is not disabled, not blind, or otherwise not entitled to or eligible for benefits under titles II or XVI of the Act.

Condition 2: There is evidence that an individual's own medical source(s) prescribed treatment for the medically determinable impairment(s) upon which the disability finding is based

If we find that the individual is otherwise entitled to disability or eligible for statutory blindness benefits under titles II or XVI of the Act, we will only determine if the individual has failed to follow prescribed treatment for the medically determinable impairment(s) upon which the disability finding is based if the individual's own medical source(s) prescribed the treatment.<sup>5</sup> We will not determine whether the individual failed to follow prescribed treatment if the treatment was prescribed only by a consultative examiner (CE), medical consultant (MC), psychological consultant (PC), medical expert (ME), or by a medical source during an evaluation conducted solely to determine eligibility to any State or Federal benefit.

Prescribed treatment means any medication, surgery, therapy, use of durable medical equipment, or use of assistive devices. Prescribed treatment does not include lifestyle modifications, such as dieting, exercise, or smoking cessation. We will consider any evidence of prescribed treatment, whether it appears on prescription forms or is otherwise indicated within a medical source's records.

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<sup>5</sup> See 20 CFR 404.1502 and 416.902 for the definition of "medical source."

We will consider treatment a medical source prescribed in the past if that treatment is still relevant to the individual's medically determinable impairments that are present during the potential period of entitlement or eligibility and upon which the disability finding was based. We will evaluate whether the individual failed to follow the prescribed treatment, and whether there is good cause for this failure, only for the period(s) during which the individual may be entitled to benefits under the Act.

For example: On January 2, 2017, an individual filed for disability benefits based on an impairment related to a lower-extremity amputation. The individual is no longer wearing a prosthesis that her medical source prescribed in 2015. We determine that the individual meets all of the other criteria for disability. In this scenario, we will evaluate whether the individual is failing to follow the prescribed treatment to wear the prosthesis during the potential entitlement period and whether the individual has good cause for not following the prescribed treatment during this period. However, we will not consider whether the individual failed to follow prescribed treatment prior to the first possible date of entitlement.

Condition 3: There is evidence that the individual did not follow the prescribed treatment

If we have any evidence that the individual is not following the prescribed treatment, this condition is satisfied. For example, a medical source may include in a treatment note that the patient has not been compliant with a prescribed medication regimen.



C. How we will make a failure to follow prescribed treatment determination

If all three conditions exist, we will determine whether the individual has failed to follow prescribed treatment in the claim. To make a failure to follow prescribed treatment determination, we will:

1. Assess whether the prescribed treatment, if followed, would be expected to restore the individual's ability to engage in SGA.
2. Assess whether the individual has good cause for not following the prescribed treatment.

We may make either assessment first. If we first assess that the prescribed treatment, if followed, would not be expected to restore the individual's ability to engage in SGA, then it is unnecessary for us to assess whether the individual had good cause. Similarly, if we first assess that an individual has good cause for not following the prescribed treatment, then it is unnecessary for us to assess whether the prescribed treatment, if followed, would be expected to restore the individual's ability to engage in SGA.

Assessment 1: We assess whether the prescribed treatment, if followed, would be expected to restore the individual's ability to engage in SGA

This assessment focuses on the prescribed treatment. We will determine whether we would expect the prescribed treatment, if followed, to restore the individual's ability to engage in SGA. We are responsible for making this assessment, and we will consider all the relevant evidence in the record. At the initial and reconsideration levels of the administrative review process, an MC or PC will make this assessment. At the hearings

and Appeals Council (AC) levels, the adjudicator(s) will make this assessment. Although the conclusion of this assessment ultimately rests with us, we will consider the prescribing medical source's prognosis.

If we first determine that following the prescribed treatment would not be expected to restore the individual's ability to engage in SGA, then it is unnecessary for us to assess whether the individual had good cause for failing to follow the prescribed treatment. If we determine that following the prescribed treatment would restore the individual's ability to engage in SGA, we will then assess whether the individual has good cause for not following the prescribed treatment.

Assessment 2: We assess whether the individual has good cause for not following the prescribed treatment

This assessment focuses on whether the individual has good cause for not following the prescribed treatment.

In adult claims, the individual has the burden to provide evidence showing that he or she has good cause for failing to follow prescribed treatment.

In child claims, the parent or guardian has the burden to provide evidence showing that the child has good cause for failing to follow prescribed treatment. If the child has a representative payee and the parent, guardian, or child asserts that the child would have followed prescribed treatment but for the actions of the representative payee, we will determine whether to obtain a new representative payee. If we decide to obtain a new representative payee, we will provide additional time for the child to follow the prescribed treatment before we continue considering the claim.

To assess good cause in both adult and child claims, we will develop the claim according to the instructions in the Development procedures section below. The following are examples of acceptable good cause reasons for not following prescribed treatment:

1. Religion: The established teaching and tenets of the individual's religion prohibit him or her from following the prescribed treatment. The individual must identify the religion, provide evidence of the individual's membership in or affiliation to his or her religion, and provide evidence that the religion's teachings do not permit the individual to follow the prescribed treatment.
2. Cost: The individual is unable to afford prescribed treatment, which he or she is willing to follow, but for which affordable or free community resources are unavailable. Some individuals can obtain free or subsidized health insurance plans or healthcare from a clinic or other provider. In these instances, the individual must demonstrate why he or she does not have health insurance that pays for the prescribed treatment or why he or she failed to obtain treatment at the free or subsidized healthcare provider.
3. Incapacity: The individual is unable to understand the consequences of failing to follow prescribed treatment.
4. Medical disagreement: When the individual's own medical sources disagree about whether the individual should follow a prescribed treatment, the individual has good cause to not follow the prescribed treatment. Similarly, when an individual chooses to follow one kind of treatment prescribed by one medical source to the

simultaneous exclusion of an alternate treatment prescribed by another medical source, the individual has good cause not to follow the alternate treatment.

5. Intense fear of surgery: The individual's fear of surgery is so intense that it is a contraindication to having the surgery. We require a written statement from an individual's own medical source affirming that the individual's intense fear of surgery is in fact a contraindication to having the surgery. We will not consider an individual's refusal of surgery as good cause for failing to follow prescribed treatment if it is based on the individual's assertion that success is not guaranteed or that the individual knows of someone else for whom the treatment was not successful.
6. Prior history: The individual previously had major surgery for the same impairment with unsuccessful results and the same or similar additional major surgery is now prescribed.
7. High risk of loss of life or limb: The treatment involves a high risk for loss of life or limb. Treatments in this category include:
  - Surgeries with a risk of death, such as open-heart surgery or organ transplant.
  - Cataract surgery in one eye with a documented, unusually high-risk of serious surgical complications when the individual also has a severe visual impairment of the other eye that cannot be improved through treatment.
  - Amputation of an extremity or a major part of an extremity.
8. Risk of addiction to opioid medication: The prescribed treatment is for opioid medication.

9. Other: If the individual offers another reason for failing to follow prescribed treatment, we will determine whether it is reasonably justified on a case-by-case basis.

We will not consider as good cause an individual's allegation that he or she was unaware that his or her own medical source prescribed the treatment, unless the individual shows incapacity as described above. Similarly, mere assertions or allegations about the effectiveness of the treatment are insufficient to meet the individual's burden to show good cause for not following the prescribed treatment.

D. Development procedures

If evidence we already have in a claim is insufficient to make the required assessment(s) in the failure to follow prescribed treatment determination, we may develop the evidence, as appropriate. This development could include contacting the individual's medical source(s) or the individual to ask why he or she did not follow the prescribed treatment. Although it may be helpful to have evidence from a CE or ME, we are not required to purchase a CE or obtain testimony from an ME to help us determine whether we expect a prescribed treatment, if followed, would restore the ability to engage in SGA. We are responsible for resolving any conflicts in the evidence, including inconsistencies between statements made by the individual and information received from his or her medical source(s). We may also evaluate the claim using the procedures for fraud or similar fault, if appropriate.

E. Required written statement of failure to follow prescribed treatment determination

When we make a failure to follow prescribed treatment determination, we will explain the basis for our findings in our determination or decision.

F. When we make a failure to follow prescribed treatment determination within the sequential evaluation process for initial claims

Adult claims that meet or equal a listing at step 3

Generally, if we find that an individual's impairment(s) meets or medically equals a listing at step 3 of the sequential evaluation process, and there is evidence of all three conditions listed in Section B above, we will determine whether the individual failed to follow prescribed treatment. We will determine whether an individual would still meet or medically equal a listing had he or she followed the prescribed treatment. If we determine the individual would no longer meet or medically equal the listing had he or she followed prescribed treatment, we will assess whether there is good cause for not following the prescribed treatment. We will determine that the individual is disabled if we find that he or she has good cause for not following the prescribed treatment. If we do not find good cause, we will continue to evaluate the claim using the sequential evaluation process by determining the individual's residual functional capacity (RFC).<sup>6</sup>

There are two instances when we will not make a failure to follow prescribed treatment determination at step 3 of the sequential evaluation process, even if there is evidence that an individual did not follow prescribed treatment. First, we will not make a

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<sup>6</sup> See 20 CFR 404.1545 and 416.945.

failure to follow prescribed treatment determination when we find the individual disabled based on a listing that requires only the presence of laboratory findings. In these claims, treatment would have no effect on the disability determination or decision. Second, we will not make a failure to follow prescribed treatment determination when we find the individual is disabled based on a listed impairment(s) which requires us to consider whether the individual was following that specific treatment as part of the required listing analysis. If either of these exceptions apply, we will find the individual is disabled without making a failure to follow prescribed treatment determination.

Title XVI child claims that meet, medically equal, or functionally equal the listings at step 3

Generally, if we find that a child's impairment(s) meets, medically equals, or functionally equals the listings at step 3 of the sequential evaluation process, and there is evidence of all three conditions listed in Section B above, we will determine whether there has been a failure to follow prescribed treatment. We will determine whether the child's impairment(s) would still meet, medically equal, or functionally equal the listings had he or she followed the prescribed treatment. If we determine the child's impairment(s) would no longer meet, medically equal, or functionally equal the listings had he or she followed prescribed treatment, we will assess whether there is good cause for not following the prescribed treatment. We will find the child is disabled if we determine that he or she has good cause for not following the prescribed treatment. If we determine that there is not good cause for failing to following the prescribed treatment, we will find the child is not disabled.

There are two instances when we will not make a failure to follow prescribed treatment determination at step 3 of sequential evaluation process even if there is evidence that a child did not follow prescribed treatment. First, we will not make a failure to follow prescribed treatment determination when we find the child is disabled based on a listing that requires only the presence of laboratory findings. In these claims, treatment would have no impact on the disability determination or decision. Second, we will not make a failure to follow prescribed treatment determination when we find the child is disabled based on a listed impairment(s) which requires us to consider whether the child was following that specific treatment as part of the required listing analysis. If either of these exceptions apply, we will find the child is disabled without making a failure to follow prescribed treatment determination.

#### Adult claims finding disability at step 5

If we find that an individual is disabled at step 5 of the sequential evaluation process and there is evidence the individual is not following treatment prescribed by his or her own medical source(s), before we find the individual is disabled, we will assess whether the individual would still be disabled if he or she were following the prescribed treatment.

We will determine what the individual's residual functional capacity (RFC) would be had he or she followed the prescribed treatment. We will then use that RFC to reevaluate steps 4 and 5 of the sequential evaluation process to determine whether the individual could perform his or her past relevant work at step 4 or adjust to other work at step 5. We will find the individual is disabled if we determine that the individual would



remain unable to engage in SGA, even if the individual had followed the prescribed treatment. We will also find the individual is disabled if we find the individual had good cause for not following the prescribed treatment. However, we will find the individual is not disabled if the individual does not have good cause for not following the prescribed treatment and we determine that, had the individual followed the prescribed treatment, he or she could perform past relevant work or engage in other SGA.

G. Reopening a determination or decision

As permitted by our regulations, we may reopen a favorable determination or decision if we discover we did not apply the failure to follow prescribed treatment policy correctly.<sup>7</sup> We may base our reopening on the evidence we had in the folder at the time we made our determination or decision or based on new evidence we receive. When we reopen a disability or blindness determination or decision and find that an individual does not have good cause for failing to follow prescribed treatment, we will issue a predetermination notice and offer the individual an opportunity to respond before we terminate benefits.

H. Continuing Disability Reviews (CDR)

When we conduct a CDR, we will make a failure to follow prescribed treatment determination when the individual's own medical source(s) prescribed a new treatment for the disabling impairment(s) since the last favorable determination or decision and the individual did not follow the prescribed treatment.

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<sup>7</sup> See 20 CFR 404.988, 404.989, 416.1488, and 416.1489.

We will also make a failure to follow prescribed treatment determination during a CDR if we find that an individual would continue to be entitled to disability or blindness benefits based upon an impairment first alleged during the CDR and there is evidence that the individual has not followed his or her own medical source's prescribed treatment for that impairment.

If we determine an individual does not have good cause for failing to follow the prescribed treatment that we have determined would restore the individual's ability engage in SGA, we will issue a predetermination notice and, because benefits may be terminated, offer the individual an opportunity to respond before terminating benefits. Individuals are entitled to benefits while we develop evidence to determine whether they failed to follow prescribed treatment. If we determine that an individual failed to follow prescribed treatment without good cause in either situation, we will cease benefits two months after the month of the determination or decision that the individual is no longer disabled or statutorily blind.

#### I. Duration in disability and Title II blindness claims

If an individual failed to follow the prescribed treatment without good cause within 12 months of onset of disability or blindness, we will find the individual is not disabled because the duration requirement is not met.<sup>8</sup> However, if an individual failed to follow prescribed treatment without good cause more than 12 months after onset of disability or blindness and is otherwise disabled, we will find the individual is disabled with a closed period that ends when the individual failed to follow the prescribed

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<sup>8</sup> See 20 CFR 404.1509 and 416.909.

treatment. In this situation, we will continue to pay benefits as usual through the second month after the month disability or blindness ends.

J. Duration in Title XVI blindness claims

Because title XVI blindness entitlement does not have a duration requirement, an individual meeting the title XVI blindness requirements may be entitled to benefits beginning the month after he or she applies for benefits.<sup>9</sup> If we determine an individual failed to follow prescribed treatment without good cause any time before the first day of the month after filing, we will find the individual is not disabled. However, if we determine the individual failed to follow prescribed treatment without good cause any time after the first day of the month after filing, we will find the individual is disabled with a closed period from the date of entitlement until the date we determined the individual failed to follow the prescribed treatment without good cause. In this situation, we will continue to pay benefits as usual through the second month after the month blindness ends.

If we need further development to determine whether a title XVI blind individual failed to follow prescribed treatment without good cause, the individual is entitled to benefits while we conduct the additional development. At the hearing and Appeals Council levels, we will refer the claim to the effectuating component to develop the evidence necessary to make a failure to follow prescribed treatment determination.

K. Claims involving both drug addiction and alcoholism (DAA) and failure to follow prescribed treatment

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<sup>9</sup> Section 216(i)(1)(B) of the Act.

In a claim that may involve both DAA and failure to follow a prescribed treatment for an impairment other than DAA, we will first make the DAA determination.<sup>10</sup> If we find that the individual is disabled considering all impairments including the DAA and that DAA is material to our determination of disability, we will deny the claim and not make a failure to follow prescribed treatment determination. If we find that the individual is disabled considering all impairments including the DAA, but the DAA is not material to our determination of disability, we will then make the failure to follow prescribed treatment determination for the impairment(s) other than DAA. Even if the prescribed treatment for the other impairment(s) may also have beneficial effect on the DAA, we do not reevaluate for DAA materiality a second time.

For example, we cannot find that an individual has failed to follow prescribed treatment for liver disease based on a failure to follow treatment prescribed for alcohol dependence. If the cessation of drinking alcohol would be expected to improve the individual's functioning so that he or she is not disabled, we would find that DAA is material to the determination of disability and deny the claim for that reason.

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<sup>10</sup> See SSR 13-2p: Titles II and XVI: Evaluating Cases Involving Drug Addiction and Alcoholism (DAA), 78 FR 11939 (Mar. 22, 2013).

